No. [redacted]

93-664

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In The Supreme Court Of The United States

OCTOBER TERM, 1993

ZITA KING KIRATLI, et al.,

Petitioners.

v.

ERSAN RESOURCES, INC., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Did the United States Court of Appeals for the Fourth Circuit commit error by dismissing an appeal, after the district court found the appellants/petitioners in contempt of a previously issued injunction, even though the appellants/petitioners have challenged the propriety of the injunction throughout the entirety of the litigation?

II. Did the appellate court below err when it found that Zita King Kiratli had no true ownership interest in the vessel ERSAN and was not a real party in interest?

PARTIES TO THE PROCEEDING

The parties to this proceeding are the Petitioners, Dundar Ozey and Zita King Kiratli, and the Respondents, Ersan Resources, Inc. and Erhan Ozey.

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JURISDICTIONAL STATEMENT

I. Petitioners herein seek review of the Order dated July 8, 1993 from the United States Court of Appeals for the Fourth Circuit dismissing the appeal of Dundar Ozey.

II. Petitioners also seek review of the Order dated July 20, 1993 from the United States Court of Appeals for the Fourth Circuit dismissing the appeal of Zita King Kiratli.

III. The statutory provision believed to confer jurisdiction to review the Orders in question by Writ of Certiorari is 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

This case involves a dispute between a father, Dundar Ozey (hereinafter "Dundar") and his son, Erhan Ozey (hereinafter "Erhan"), over the ownership of a 65 foot long range cruiser the ERSAN. Dundar Ozey is a 70 year old Turkish business man, who resides in Istanbul, Turkey, and Erhan Ozey, a resident of Tulsa, Oklahoma, and the sole shareholder in Ersan Resources, Inc., an Oklahoma corporation. Zita King Kiratli (hereinafter "Zita") is a U.S. citizen who resides in Baltimore, Maryland. At all material times, the yacht ERSAN has been berthed and maintained at the

Kusadasi Marina, south of Istanbul, Turkey.

On June 19, 1992, Ersan Resources, Inc. (hereinafter "Ersan Resources") filed a Complaint in the United States District Court for the Eastern District of Virginia, Norfolk Division, against Zita King Kiratli pursuant to 28 U.S.C. §1333 regarding admiralty and maritime jurisdiction. (A-101) In the Complaint Ersan Resources sought, inter alia, a declaration that Ersan Resources was the lawful owner of the yacht ERSAN and that Zita be enjoined from asserting any title or possessory interest in the Ersan. (A-110, 114)

On July 8, 1992, Ersan Resources filed a Motion for a Preliminary Injunction to prevent Zita from taking

possession of, or taking any action regarding, the ERSAN. After an ex parte hearing the district court issued an Injunction on July 16, 1992, which found that Ersan Resources was the legal owner of the ERSAN and enjoined Zita from interfering with the rights of Ersan Resources to free and unimpeded access to the vessel. (A-87) By Order dated August 10, 1992, the district court found Zita in contempt of the July 16, 1992 Injunction and assessed damages against her in the amount of $4,649.00. (A-83)

On August 31, 1992, Ersan Resources filed an Amended Complaint adding Dundar Ozey as a defendant. The Amended Complaint alleged that Dundar attempted through fraud and collusion

with Zita to deprive Ersan Resources of the ERSAN by attempt to obtain possession and title to the vessel in Kusadasi, Turkey. On September 22, 1992, Dundar filed a Third-Party Complaint against his son, Erhan Ozey, the president and sole stockholder of Ersan Resources. The Third-Party Complaint alleged that Erhan was guilty of fraud, misrepresentation and deceit in connection with the ownership of the ERSAN.

The trial on the merits commenced on January 6, 1993, before the Honorable J. Calvitt Clarke, Jr. sitting without a jury. By Order dated January 15, 1993, the court held that Ersan Resources was the lawful owner of the ERSAN and that Erhan was the sole

stockholder and president. (A-80) The district court also permanently enjoined Zita and Dundar from interfering with Ersan Resources' right to ownership and possession of the ERSAN. (A-81-82) A Motion for Reconsideration and supporting Brief was filed by Dundar and Zita asking the lower court to consider the injunctive aspect of its January 15, 1993. By Order dated February 4, 1993, the Motion for Reconsideration was denied. (A-91) A timely Notice of Appeal was filed by Zita and Dundar to the United States Court of Appeals for the Fourth Circuit.

While the case was on appeal, Ersan Resources and Erhan moved for a Rule to Show Cause why Zita and Dundar

should not be held in contempt. By Order dated May 13, 1993, the district court found that Dundar Ozey was in contempt for deliberately and knowingly violating the January 15, 1993 injunction by his intervention in an pending case in the Basic Civil Court in Kusadasi, Turkey wherein he asserted that Zita was the owner of the ERSAN. (A-28-29) The lower court deferred ruling on the contempt citation with regard to Zita pending her advising the Turkish court that she did not seek ownership or possession of the vessel in that court. (A-32-33)

Ersan Resources and Erhan then moved to dismiss the appeal because of the contumacious conduct of Dundar and Zita. By Order dated June 21, 1993,

the Fourth Circuit found that Dundar was in contempt of the lower court's January 15, 1993 injunction and that such contempt warranted dismissal of his appeal. (A-19) The appellate court granted Dundar ten (10) days to purge himself of the contempt or suffer dismissal of his appeal. (A-22) With regard to Zita, the Fourth Circuit found that it ostensibly appeared that she had purged herself of any contempt, but that dismissal of the appeal would be appropriate if she was a nominal party. (A-24)

Dundar did not, in fact, withdraw from the pending Turkish litigation and by Order dated July 8, 1993, the Fourth Circuit dismissed his appeal. (A-5) By Order dated July 20, 1993, the Fourth

Circuit found that Zita was not a true party in interest and dismissed her appeal. (A-2) Petitioners, Dundar and Zita seek a Writ of Certiorari from the dismissal of their respective appeals.

ARGUMENT

I. THE DISMISSAL OF THE APPEAL WAS IMPROPER

Neither this Court nor any other federal court has decided the precise issue presented herein: whether an appeal may be dismissed for the violation of an injunction where the party violating the injunction has contested, in both the district and appellate courts, the district court's power to issue the injunction and the propriety of the injunction. In the proceedings below, Zita and Dundar argued that the district court, sitting in admiralty, had no power to issue an injunction or in the alternative, that notions of international comity dictate

against issuance of a foreign anti-suit injunction.[1] It was further contended that the foreign anti-suit injunction was improper because it required Dundar and Zita to satisfy the judgment (that is relinquishing possession of the ERSAN) by not contesting ownership of the yacht in any other forum. This Court addressed a similar situation in National Union of Marine Cooks and Stewards v. Arnold, 348 U.S. 37 (1954).

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[1] Although the injunction in this case operates against the parties, and not directly against the foreign court, due regard should be given to principles of international comity because such an order effectively restricts the jurisdiction of the court of a foreign sovereign. United States v. Davis, 767 F.2d 1025, 1038 (2nd Cir. 1985).

Justice Burton framed the issue in that case as follows:

> The question before us is whether a state appellate court violates the due process or the equal protection clause of the Fourteenth Amendment to the Constitution of the United States when it dismisses an appeal from a money judgment as a reasonable measure for safeguarding the collectibility of that judgment.

Id. at 38.

In National Union, a money judgment was entered against National Union as a result of a "black-listing" letter. At the trial level, the plaintiffs instituted a supplemental proceeding to discover defendants available assets. There were no assets in the State of Washington, but defendant held approximately $298,000

in bonds in California. The district court ordered the defendant to deliver these bonds to the court's receiver, for safekeeping, pending disposition of the appeal. The defendant failed to deliver the bonds as ordered and was adjudged in contempt. The Supreme Court of Washington struck the defendant's appeal on the merits as a result of the contempt citation. There is no indication in National Union that defendant objected to the supplemental proceedings wherein their assets were uncovered. Nor did the defendant object to, or note an appeal from, the trial court's issuance of the order requiring it to deliver the bonds.

It is particularly noteworthy that this Court in National Union found that

the Washington state court order was reasonable because it did not seek to apply the bonds to the satisfaction of the judgment. The order merely directed defendant to deliver the bonds to the court's receiver for safekeeping. The appeal was dismissed, not because defendant failed to satisfy the money judgment, but because of its failure to comply with the court's order safeguarding the assets pending appeal. The appeal in this case does not involve a money judgement, but the right to possession and control of a res located in a foreign country.

In this case, Dundar and Zita have vigorously contested the propriety of the injunction from which the contempt and subsequent dismissal arises.

Dundar and Zita found themselves in a veritable catch-22. If they complied with the district court injunction, they ran the substantial risk that the ERSAN would be moved from Turkey to another jurisdiction or sold for cash. A subsequent ruling from the Fourth Circuit that the injunction was improper, or that Dundar has an ownership interest in the ERSAN, would be a hollow victory. In attempting to protect his interest in the ERSAN, Dundar continued to contest the ownership issue in Turkey.[2] According to the Fourth Circuit, Dundar's action

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[2] It is noteworthy that the Turkish litigation was initiated by Ersan Resources and preceded the U.S. litigation.

results in a forfeiture of his right to appeal the district court's findings regarding the ownership and the injunction issues. The dismissal of an appeal under these circumstances frustrates the very purpose of an appellate tribunal and is contrary to public policy.

The lower court's Order dated January 15, 1993 declares Ersan Resources the lawful owner of the ERSAN and permanently enjoins Zita and Dundar from contesting ownership. The court below did more than protect the integrity of its ruling by protecting the asset at issue (the ERSAN), it ordered Dundar and Zita to satisfy the judgment by not contesting ownership in another forum. Under the court's

ruling Erhan is entitled to sell the ERSAN for cash and Dundar is unable to prevent such a transaction. The scope of the injunction in this case is analogous to an award of money damages coupled with a requirement that the damages be satisfied with existing assets. This Court in National Union suggests that such an order is not reasonable and does not support the dismissal of an appeal.

Finally, the Fourth Circuit incorrectly concluded that Dundar's intervention in the Turkish proceedings renders the U.S. courts powerless to enforce its judgment if the appeal is affirmed. In so finding, the appellate court below relied on Stern v. United States, 249 F.2d 720 (2nd Cir. 1957)

(per curiam), cert. denied, 357 U.S. 919 (1958). (A-11) In Stern, the Second Circuit dismissed an appeal from a judgment of criminal contempt imposing a fine of $25,000 because, before the fine could be collected, appellants had liquidated all their property and moved it and themselves to another country.

The Stern decision is readily distinguishable. Dundar is and always has been a citizen and resident of Turkey. His return to Turkey following the trial of this matter is not a "studied attempt to render the court powerless." Stern, 249 F.2d at 722. There is also no evidence that Dundar removed any assets from the jurisdiction of the U.S. courts since

the ERSAN, the only asset at issue, has always been physically located in Turkey. Moreover, a finding by the Turkish court that Dundar is the true owner of the ERSAN, does not render the U.S. court powerless to enforce its decree. The question then becomes whether notions of international comity require the U.S. court to defer to the Turkish court. The Turkish court has shown considerable deference to the U.S. proceedings,[3] and the U.S. courts should do likewise by allowing the Turkish proceeding to continue. Accordingly, the Fourth Circuit's Order

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[3] The Turkish court continued their proceedings to give the U.S. court an opportunity to decide the ownership issue. (A-55)

dated July 8, 1993 dismissing the appeal of Dundar Ozey should be reversed.

II. ZITA KING KIRATLI IS NOT A NOMINAL PARTY

By Order dated July 20, 1993, the Fourth Circuit held that Zita was not a real party in interest because she had no true ownership interest in the ERSAN. (A-2) In so finding, the Fourth Circuit not only disregarded this Court's definition of a nominal party, but also summarily decided one of the primary issues on appeal. A nominal party on appeal is one "having no legal interest in maintaining or reversing a judgment or decree." Amadeo v. Northern Assurance Co., 201 U.S. 194, 201 (1906). Zita has a personal,

financial and legal interest in reversal of the lower court's holding that she is not the legal title holder of the ERSAN. Throughout the entirety of this litigation Zita has consistently taken the position that she holds legal title to the ERSAN on behalf of Dundar Ozey, the true beneficial and equitable owner. Similarly, both Zita and Dundar have consistently argued that there is a recognized distinction between legal and equitable ownership.

The importance of Zita's role in this litigation is best evidenced by a review of the original Complaint filed by Ersan Resources. There are numerous references to Dundar Ozey's role in this matter, but the Complaint seeks

compensatory and punitive damages solely against Zita because of her allegedly fraudulent claim of ownership of the ERSAN. (A-115) The Complaint also prays for an injunction prohibiting Zita from "asserting any title or possessory interest in the yacht ERSAN . . ." (A-115) It is rather disingenuous for Respondents to argue that Zita only has a nominal role in this litigation when the original lawsuit was directed at Zita only.

Furthermore, Ersan Resources moved for, and by Order dated July 16, 1992 was granted, a preliminary injunction against Zita Kiratli.[4] The injunction

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[4] Dundar Ozey was not a party to the suit when the July 16, 1992 injunction was issued.

not only declared Ersan Resources, Inc. "the legal owner of the vessel ERSAN" it also enjoined Zita from "interfering in any manner with the rights of Ersan Resources to free an unimpeded access to the ERSAN." (A-88) By Order dated August 11, 1992 the district court found that Zita violated said injunction and found her in contempt of court. (A-83) She was fined $4,649.00 in costs and attorney's fees related to the filing of the Motion for Contempt. (A-85) Zita has both a legal and financial interest in being declared the legal title holder of the ERSAN and therefore being purged of this contempt of court.

Zita also has a legal interest in reversal of the January 15, 1993 Order

which found her conduct to be fraudulent, criminal and conspiratorial. The lower court denied equitable relief because Dundar came to the court with unclean hands. The trial court reasoned that if Dundar intended to retain ownership of the ERSAN then Zita falsely filed documents on his behalf with the U.S. Coast Guard. (A-75) The district court noted that there was a criminal penalty of up to $10,000 in fines and/or up to five years in prison for knowingly and willingly making false statements of material fact to agency of the United States. (A-66) While the court did not impose any fine or imprisonment as a result of the alleged criminal conduct, the implication that Zita attempted to

defraud an agency of the United States government is readily apparent. These statements not only impugn Zita's character, but also open the door for a possible federal prosecution.

The lower court's findings of fraudulent and conspiratorial conduct by Dundar and Zita arise from the court's misreading of 46 C.F.R. §67.03-9.[5] In their opening brief filed in the Fourth Circuit, Petitioners argue that the trial court erroneously imposed the 75 percent stock interest requirement applicable to coastwise and Great Lakes trade to a recreational

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[5] Judge Clarke recited §67.03-9 and then stated: "Additionally, at least 75% of the corporation's stock must be owned by U.S. citizens." (A-66)

craft.[6] Zita has a legal interest in

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[6] The plain language of §67.03-9 reveals that the 75% stock interest requirement does not apply to recreational craft:

> (a) A corporation is a citizen for the purposes of obtaining a registry or a recreational endorsement if:
>
> (1) It is incorporated under the laws of the United States or of a state;
>
> (2) Its president and, if the president is not the chief executive officer, its chief executive officer, by whatever title, is a citizen;
>
> (3) Its chairman of the board of directors is a citizen; and
>
> (4) No more of its directors are non-citizens than a minority of the number necessary to constitute a quorum.

The regulation continues:

> (b) A corporation is a citizen for purposes of obtaining a <u>coast wise or Great Lakes endorsement</u> if:
>
> (1) It meets all the requirements of paragraph (a) of this section; and

correcting the district court's misconstruction of the regulation and declaring that there was nothing fraudulent, conspiratorial or criminal about Dundar Ozey vesting titular ownership in Zita while retaining equitable ownership for himself.

Finally, Zita has a legal interest in overturning the permanent injunction granted on January 15, 1993. A second Motion to hold Zita in contempt was filed by Ersan Resources on April 28, 1993. By Order dated May 13, 1993, the lower court indicated that it was not satisfied with the telegram which Zita

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> (2) At least 75 percent of the stock interest in the corporation is owned by citizens. (emphasis added)

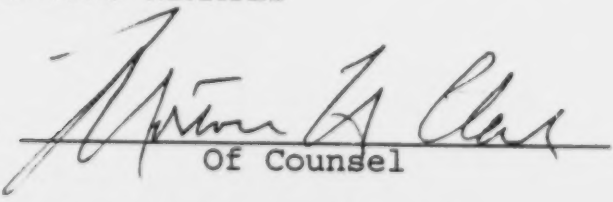
had sent to the Basic Civil Court in Kusadasi, Turkey because it was not clear that she was "giving up her claim of ownership." (A-31-32) The Fourth Circuit found that it ostensibly appeared that Zita had taken the necessary steps to purge herself of the contempt. (A-23-24) Zita disclaimed ownership interest in the ERSAN in the Turkish courts only to avoid a second contempt citation. She has never relinquished her claim of titular ownership on behalf of Dundar Ozey in any litigation in the United States. Zita has a legal interest in overturning the permanent injunction issued on January 15, 1993, in that it prevents her from protecting her titular legal ownership interest in the

ERSAN in the Turkish courts. Accordingly, the Fourth Circuit's Order dated July 20, 1993 dismissing the appeal of Zita Kiratli should be reversed.

CONCLUSION

It is respectfully submitted that the Orders dated July 8, 1993 and July 20, 1993 from the United States Court of Appeals for the Fourth Circuit dismissing the appeals of Petitioners Dundar Ozey and Zita King Kiratli conflict with the decisions of this Court, contravene notions of international comity and should therefore be reversed.

DUNDAR OZEY and
ZITA KING KIRATLI

BY: 
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APPENDIX

7/20/93

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

93-1421

ERSAN RESOURCES, INC.,
Plaintiff-Appellee,

versus

DUNDAR OZEY,
Defendant-Appellant,

and

ZITA KING KIRATLI,
Defendant-Appellant,

versus

ERHAN OZEY,
Third Party Defendant-Appellee.

O R D E R

This matter is before the court on the motion of appellees, Ersan Resources, Inc., plaintiff below, and

Erhan Ozey, third-party defendant below, to dismiss this appeal. A description of the facts and circumstances of this case were set out in our previous orders.

By order dated July 8, 1993, this court dismissed the appellant Dundar Ozey due to his attempts to render the court powerless to enforce its decrees. It is clear from the facts and legal conclusions presented in the materials before the court that the remaining appellant, Zita King Kiratli, is not a true party-in-interest and must also be dismissed.

Whatever legal interest Kiratli may have had in the vessel ERSAN originates in a Bill of Sale to Kiratli dated March 4, 1986. By Kiratli's own

admission: "I was merely a paper figure to register [the vessel]." (Joint Appendix (J.A.) 171). furthermore, Kiratli transferred all rights to use and convey the vessel to Dundar Ozey. Finally, the vessel was sold to a third party in 1988 and Kiratli informed the United States Coast Guard that the vessel was sold and that United States documentation should be canceled (J.A. 292). In short, it is abundantly clear that Kiratli has no true ownership interest in the vessel ERSAN and is not a real party-in-interest. This appeal is therefore dismissed. See Industrial Development Corp. v. Pederson, 855 F.2d 222 (1988).

With the concurrences of Judge Wilkins and Judge Niemeyer.

/s/ Clyde H. Hamilton

For the Court

07/08/93

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

93-1421

ERSAN RESOURCES, INC.,
Plaintiff-Appellee,

versus

DUNDAR OZEY,
Defendant-Appellant,

and

ZITA KING KIRATLI,
Defendant-Appellant,

versus

ERHAN OZEY,
Third Party Defendant-Appellee.

O R D E R

This matter is before the court on the motion of the appellees, Ersan Resources, Inc., plaintiff below, and Erhan Ozey, third-party defendant below, to dismiss this appeal because of the contumacious conduct of the appellants Dundar Ozey and Zita King Kiratli, defendants below, which occurred subsequent to the district court's January 15, 1993 judgment and permanent injunction against them.

In the underlying action, the district court held that Ersan Resources, Inc. was the legal owner of the vessel ERSAN, a sixty-five foot Hatteras Yacht, registered with the United States Coast Guard at St. Louis,

Missouri, but physically then located in Turkey. In violation of the district court's injunction against the defendants below from interfering with Ersan Resources, Inc.'s right to ownership and possession of the ERSAN, Dundar Ozey intervened in a lawsuit pending in Turkey concerning the same Yacht ERSAN, asserting that Zita King Kiratli was the owner of the vessel and that he was entitled to possession of it pursuant to her power of attorney.

On the motion of Ersan Resources, Inc., the district court issued an order holding Dundar Ozey in contempt and requiring him to pay one thousand dollars per day until he purges himself

of contempt. The district court delayed a ruling on the contempt citation against the defendant Zita King Kiratli pending her advising the Turkish court that she did not seek ownership or possession of the vessel in that court and did not authorize Dundar Ozey to make any such representations on her behalf. Kiratli apparently so advised the Turkish court.

Dundar Ozey did not withdraw from the Turkish court proceedings and remained in contempt of court after filing an appeal of the district court's underlying decision on the ownership of the vessel. On the motion

of the appellees, this court entered an order on June 18, 1993--in light of Dundar Ozey's demonstration of a determined effort to deprive the court of power to execute its mandate--requiring him to purge himself of the contempt of the district court's judgment and permanent injunction within ten days or have his appeal dismissed.

On June 30, 1993 Dundar Ozey responded, refusing to withdraw from the pending Turkish litigation because he was "not in a position to withdraw . . . ."

In the underlying action, Dundar Ozey answered the complaint of Ersan

Resources, Inc. and also filed a third-party complaint against Erhan Ozey, the President and sole stockholder of Ersan Resources, Inc. Dundar Ozey also filed a motion for preliminary injunction against Ersan Resources, Inc. and Erhan Ozey to prevent them from taking possession or action against the Yacht ERSAN and to amend the court's preliminary injunction entered on July 16, 1992. After thus invoking the aid and jurisdiction of the district court, Dundar Ozey thereafter sought to ignore and thwart the final judgment of the district court that Ersan Resources, Inc. was the lawful owner of the ERSAN and that the defendants were

permanently enjoined from interfering with that right to ownership. The appellant, Dundar Ozey, by his disregard of this court's and the district court's mandates, has "show[n] a determined effort to deprive the court of power to execute its mandate if the judgment on appeal should be affirmed. Here we have an undisputed, studied, and successful attempt to render the court powerless to enforce its decree[s]." Stern v. United States, 249 F.2d 720, 722 (2d Cir. 1957), (quoted in In Re: Feit and Drexler, Inc.), 760 F.2d 406, 413 (2d Cir. 1985). Therefore, the appeal of defendant-appellant Dundar Ozey is

hereby dismissed. As stated in our earlier order of June 18, 1993, should it appear that the defendant-appellant Zita King Kiratli is a nominal party, her appeal shall also be dismissed.

With the concurrences of Judge Wilkins and Judge Niemeyer.

/s/ Clyde H. Hamilton

For the Court

06/21/93

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

93-1421

ERSAN RESOURCES, INC.,
Plaintiff-Appellee,

versus

DUNDAR OZEY,
Defendant-Appellant,

and

ZITA KING KIRATLI,
Defendant-Appellant,

versus

ERHAN OZEY,
Third Party Defendant-Appellee.

O R D E R

The appellees Ersan Resources, Inc., plaintiff below, and Erhan Ozey, third-party defendant below, move the court to dismiss this appeal because of the contumacious conduct of the appellants Dundar Ozey and Zita King Kiratli, defendants below, which has occurred subsequent to the district court's January 15, 1993, judgment and injunction against them.

In the underlying action, Ersan Resources, Inc. sought a declaration that it was the legal owner of the ERSAN, a 65 foot Hatteras Yacht, registered with United States Coast guard at St. Louis, Missouri, but physically then located in Turkey. In

its January 15, 1993 ruling, following a four day trial, the district court held:

> The Court FINDS that Ersan Resources, Inc. is the lawful owner of the ERSAN and that Erhan Ozey is its sole stockholder and President. Defendants Zita King Kiratli and Dundar Ozey are permanently enjoined from interfering with Ersan Resources' right to ownership and possession of the ERSAN. Accordingly, the U.S. coast Guard in Norfolk, Virginia is ORDERED to cancel the documentation of the ERSAN. The Court approves and ratifies the St. Louis, Missouri Coast Guard's documentation of the ERSAN in the name of Ersan Resources, Inc.

From this judgment and a judgment denying a motion for reconsideration

entered on February 4, 1993, King and Dundar Ozey have appealed.

Approximately one week after the entry of the February 15, 1993 judgment and permanent injunction, the defendant-appellant Dundar Ozey intervened in a lawsuit pending in Turkey that had previously been filed by Ersan Resources, Inc. concerning the same yacht ERSAN, asserting that Zita King Kiratli was the owner of the vessel and that he was entitled to possession of it pursuant to her power of attorney. Thereafter at a hearing held before the Basic Civil Court in Kusadasi, Turkey on April 21, 1993, Dundar Ozey appeared asserting that the

United States judgment was invalid and asking for the yacht to be turned over to him. While the Turkish court has apparently not ruled on his request, it did, on his motion, require Ersan Resources to post a large cash bond of some $89,000.00, plus payment of other expenses, pending a decision by that court.

Ersan Resources, Inc. then filed a motion to have the defendants held in contempt of court for their flagrant violation of the injunction. After service on the defendants and after a hearing on May 13, 1993, United States District Judge J. Calvitt Clarke issued an order holding Dundar Ozey in

contempt of court and requiring him to pay $1,000.00 per day until he purges himself of contempt. It further delayed a ruling on the contempt citation against the defendant Zita King Kiratli pending her advising the Turkish court that she did not seek ownership or possession of the vessel in that court and did not authorize Dundar Ozey to make any such representations on her behalf.

It appears that the defendant-appellant Dundar Ozey has not withdrawn from the Turkish court proceedings and has given no indication that he intends to so withdraw. He therefore is still in contempt of court, seeking to

contest the ownership and possession of the yacht in Turkey after having failed to succeed in the United States District court. Because of the defendant Dundar Ozey's continuing violation of the injunction and his continued contempt of court, Ersan Resources asserts this Court should not hear his appeal and should dismiss the appeal.

Since the appeal of defendant Zita King Kiratli is based on the same allegations made by Dundar Ozey that she only had legal title to the vessel for the benefit of dundar Ozey, Ersan Resources contends her appeal also

should be dismissed as it is being made only for dundar Ozey's benefit.

While defendant-appellant Kiratli has made some attempt to purge herself from contempt of the district court's order by notifying the Turkish Court that she neither claims an interest in the ERSAN nor authorizes anyone, specifically Dundar Ozey, to claim such an interest on her behalf, it remains unclear whether she was but a nominal party in having the ERSAN documented in her name with the United States coast Guard at Norfolk, Virginia, resulting in the vessel being simultaneously documented at two different Coast Guard offices, contrary to its regulations.

No stay of the district court's January 15, 1993 injunction has been sought and no supersedeas bond was posted to stay the district court's judgment.

Dismissal of an appeal is appropriate if an appellant demonstrates "a determined effort to deprive the court of power to execute its mandate [i.e.] . . . an undisputed, studied, and successful attempt to render the court powerless to enforce its decree." In re Feit v. Drexler, 760 F.2d 406, 413 (2d Cir. 1985). We find this a persuasive rationale for application to the facts before us.

First as to the defendant-appellant Dundar Ozey. His appeal will be dismissed if, within ten days from the entry of this order, Dundar Ozey does not purge himself of contempt of the district court's January 15, 1993 judgment and permanent injunction. to purge his contempt, the defendant-appellant Dundar Ozey must take affirmative and unequivocal action and steps to cease and desist from any action in any jurisdiction seeking to circumvent the judgment of the district court in finding "that Ersan Resources, Inc. is the lawful owner of the ERSAN," including withdrawing any claim to an ownership interest in the ERSAN,

personally or on behalf of another, in the action now pending in the Basic Civil Court in Kusadasi, Turkey. The failure of the defendant-appellant Dundar Ozey to purge his contempt, together with his apparent absence and the absence of any of his assets from the jurisdiction of the district court from which this appeal lies, will be considered an attempt to render this district court powerless to enforce its judgment, and the appeal of defendant-appellant Dundar Ozey will be dismissed.

As to defendant-appellant Zita King Kiratli. From the two statements filed with the Turkish Court by Zita

King Kiratli, it ostensibly appears she has taken the necessary action to purge herself from any contempt of the district court's judgment and permanent injunction of January 15, 1993. This affirmative action notwithstanding, should the appeal as to the defendant-appellant Dundar Ozey be dismissed, and/or should it subsequent to the date of this order appear that Zita King Kiratli is but a nominal party, the appeal of Zita King Kiratli will be dismissed.

The parties are advised that the briefing schedule is not suspended and in their respective briefs the parties

should address the issue of whether Kiratli is a nominal party.

With the concurrences of Judge Wilkins and Judge Niemeyer.

/s/ Clyde H. Hamilton

For the Court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

ERSAN RESOURCES, INC.,
an Oklahoma corporation,

Plaintiff,

v. **CIVIL ACTION**
NO. 2:92cv464

ZITA KING KIRATLI,
Defendant,

and

DUNDAR OZEY,
Defendant and
Third-Party Plaintiff,

v

ERHAN OZEY,
Third-Party Defendant.

ORDER

This matter came before the Court pursuant to the Court's Rule to Show Cause issued on April 30, 1993 and returnable today. Neither Zita King

Kiratli nor Dundar Ozey appeared in person but both appeared by counsel. Ersan Resources, Inc. appeared by counsel and by its president, Erhan Ozey.

The Court first ruled on the Motion to Recuse filed by Zita King Kiratli. The Motion to Recuse is "on the grounds that Judge Clarke has a personal bias against the defendant in this case, based upon his misreading of the Code of Judicial Regulations concerning documentation of pleasure vessels." Clearly, on its face, the Motion has no merit. The United States Court of Appeals for the Fourth Circuit has held that disqualification would

only be appropriate if the bias derived from an extra-judicial source. In Re Beard, 811 F.2d 818, 827 (4th Cir. 1987).

The Motion to Recuse is DENIED.

The Court received without objection Exhibits 1, 2 and 3 filed by the plaintiff and then heard testimony from Mr. Erhan Ozey. All counsel having previously agreed that this Court has jurisdiction over the ERSAN and the defendants having submitted themselves to the jurisdiction of the Court, from the testimony and exhibits, the Court finds that Mr. Dundar Ozey is clearly in contempt of court for deliberately and knowingly violating

the Court's injunction issued on January 15, 1993 by intervening in an existing case pending in the Basic Civil Court in Kusadasi, Turkey asserting that Zita King Kiratli is the owner of the ERSAN. The defendant Dundar Ozey did not appear nor was there any representation made to the Court that he was unable to appear before the Court today. The defendant Dundar Ozey presented no evidence. The uncontested evidence has established that the ERSAN has a value of $800,000 and that Dundar Ozey's intervention in the case has caused the Turkish court to require Ersan Resources, Inc. to put up a cash bond in the Basic Civil Court

of $89,000 by May 21, 1993, and if it fails to do so, the boat will summarily be adjudged to be in Zita King Kiratli's name. Therefore, the Court finds Dundar Ozey to be in violation of the Court's Injunction Order of January 15, 1993 and assesses the defendant Dundar Ozey a fine of One thousand Dollars $1,000.00) per day until he purges himself of the contempt of court.

Zita King Kiratli also failed to appear in person. Her counsel represented to the court that he understood that his client had wired the Turkish court advising that court that she was claiming no ownership

interest in the ERSAN and had not authorized anyone to make any claim of ownership in her name. While the proceedings were in progress, plaintiff's counsel advised that he had received a copy of a telegram allegedly sent by Zita King Kiratli to the Basic Civil in Kusadasi, Turkey. He presented a copy of the telegram which the Court DIRECTS the Clerk to receive as plaintiff's exhibit No. 4. The Court finds that the telegram does not convey the message which it requires of Mrs. Kiratli in order for her to avoid a contempt citation. The wording of the telegram is such that it is clear that she is not giving up her claim of

ownership but is only saying so under threat of being placed in jail by this Court. This message can only be interpreted as a further attempt by Mrs. Kiratli to circumvent the rulings of this Court by means other than the lawful process of appeal.

The Court has directed the counsel for the plaintiff and counsel for the defendant confer [sic] and determine what form and with what formality a statement must be made in order to be received by and made a part of the record in the Turkish court. When such determination is made, Mrs. Kiratli will be expected to employ the form and formality necessary and to make her

simple statement that she is not claiming ownership of the ERSAN through the Turkish court, that she is withdrawing any such claim that might have been made on her behalf, and that she revokes all powers of attorney concerning the vessel which have been issued to Dundar Ozey. Unless Mrs. Kiratli complies with this condition, she will be held in contempt of court for allowing a claim to be made in her name in the Turkish court by Dundar Ozey.

The Court has advised counsel that it will make itself available at any time to consider further motions by Mr. Clark to be relieved as counsel for

Dundar Ozey and to consider any further problems that counsel may have in seeing that Mrs. Kiratli's statement to the Turkish court is made in accordance with this Order. The Court has further cautioned counsel that the undersigned judge will be out of town and unavailable from Thursday evening, May 20, through and including Monday, May 31, 1993.

The Clerk is DIRECTED to send a copy of this Order to counsel for the parties.

IT IS SO ORDERED.

/s/

United States District Judge

Norfolk, Virginia
May 13, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

ERSAN RESOURCES, INC.,
an Oklahoma corporation,

Plaintiff,

v. CIVIL ACTION
NO. 2:92cv464

ZITA KING KIRATLI,
Defendant,

and

DUNDAR OZEY,
Defendant and
Third-Party Plaintiff,

v

ERHAN OZEY,
Third-Party Defendant.

ORDER

This matter is before the Court on the Complaint of Plaintiff, Ersan Resources, Inc. ("Ersan Resources"), asking this Court to 1) declare Ersan

Resources the lawful owner of the motor yacht ERSAN; 2) grant judgment against the defendants Zita King Kiratli and Dundar Ozey for their fraudulent attempts to deprive the plaintiff of its vessel; 3) award punitive damages against them for their fraudulent attempts to deprive the plaintiff of its lawful title and possession to the ERSAN; and 4) grant a permanent injunction against them prohibiting them from interfering with the plaintiff's title and possession of the yacht ERSAN. For the reasons set forth below, the Court FINDS Ersan Resources to be the owner of the ERSAN and enters a permanent injunction against

defendants from interfering with plaintiff's ownership and use of the ERSAN.

FACTS

This case concerns the ownership of a 65' long range cruiser, the ERSAN. After hearing three days of trial testimony and argument on the fourth day, weighing the credibility of witnesses and considering the memoranda and exhibits filed in this case, the Court makes the following findings of fact and conclusions of law. In 1985, Hatteras Yachts, Inc., located in New Bern, North Carolina, built the ERSAN[1]

[1]Its hull number is 65LR312, and its hull identification number is HATBX312K586.

for Ersan Ticaret, Ltd. ("Ersan Ticaret"), a Turkish corporation which is 100% owned by Dundar Ozey ("Dundar"). On March 4, 1986, Dundar, as president of Ersan Ticaret, transferred 100% interest in the ERSAN to Zita King Kiratli ("Zita"), a U.S. citizen, in order to obtain a U.S. registry for the yacht.[2]

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[2]Dundar kept his yachts at the Kusadasi Marina in Turkey. The evidence is clear that Dundar documented his yachts in the United States in order to avoid a 150-160% tax imposed on Turkish yachts in Turkey, ensure safer and easier travels in the Mediterranean and avoid disclosure of his sources of income to Turkey. Trial testimony further indicated that Dundar had paid for the yacht from a Swiss bank account.

Zita then obtained a Certificate of Documentation from the U.S. Coast Guard in Norfolk, Virginia, by certifying that she was the sole owner of the ERSAN and a U.S. citizen. The Coast Guard assigned the ERSAN an official number, 694248. In support of the application for documentation Zita filed a Certificate of Marking stating the vessel's name as the ERSAN and that its hailing port, Baltimore, Maryland, had been painted on the vessel.[3] A

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[3]The official number is required to be "permanently marked in block-type arabic numerals not less than three (3) inches in height on some clearly visible interior part of the hull and that number cannot be obliterated or obscured." Certificate of Marking at TE 2 & 3. The name and hailing port must be "marked together in clearly

picture of the vessel introduced in evidence showed the absence of a hailing port painted on the vessel. There is also evidence that these markings were removed from the yacht.[4]

On May 15, 1986, Zita gave Dundar a power of attorney which gave him "all powers, discretions, elections and authority to sell, convey, lease, exchange, mortgage, pledge, release, hypothecate, or otherwise deal with, dispose of, exchange or encumber [the]

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legible and durable letters not less than four (4) inches in height on a clearly visible exterior part of the hull." Id.

[4]Nonetheless, the Court finds it unnecessary to determine in this case whether the hailing port had ever been painted on the boat as Zita certified.

yacht." Exhibit ("Ex.") 13. On January 29, 1989, pursuant to this power of attorney and without notice to Zita, Dundar sold the ERSAN to Orada, Ltd. ("Orada"). Orada then registered the ERSAN in Great Britain. On May 25, 1989, after learning of this sale, Zita wrote to the Norfolk Coast Guard as the "former owner" of the ERSAN requesting it to cancel the Norfolk documentation.

In 1989, Dundar ordered a new 65' yacht, the ERSAN V, to replace the one sold to Orada. In order to obtain U.S. documentation for the yacht, Dundar and his son, Erhan Ozey ("Erhan") incorporated Ersan Resources, Inc. ("Ersan Resources") in Oklahoma on June

28, 1989, "to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Oklahoma," Ex. 4, and to own the ERSAN V. Dundar originally thought Ersan Resources would also be an operating corporation engaged in both international trade and trade in Oklahoma. At the first corporate meeting, Margaret Keeling Ozey ("Margaret", Erhan's then=wife) was elected director, president and chief executive officer of the corporation, Erhan was elected vice president and Linda Lipka was elected secretary. The corporation issued 800 shares of stock

to Margaret in exchange for $800 and 200 shares to Dundar in exchange for $200 and "all right, title and interest in and to a motor yacht at a book value to be later determined." Ex. 4.

On Dundar's instructions Hatteras Yacht, Inc. then conveyed the ERSAN V[5] to Ersan Resources who obtained a Certificate of Documentation from the U.S. Coast Guard in St. Louis, Missouri, certifying that it owned the ERSAN V and that Margaret, its president and chairman of the board, was a U.S. citizen and owned at least 75% of Ersan Resources' stock.

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[5]Its hull number is 65MY318, and its hull identification number is HATDL318F989.

Margaret signed the application for documentation and the marking certificate on behalf of Ersan Resources as its president. Pursuant to this information and a Certificate of Marking filed by the corporation, the Coast Guard assigned the ERSAN V an official number, 955523, and issued its Certificate of Documentation setting forth the vessel's name as ERSAN V and its hailing port as St. Louis, Missouri.

In June of 1990, pursuant to a power of attorney given by Ersan Resources and signed by Margaret as its president, Dundar traded the ERSAN V with Orada for the ERSAN plus $200,000.

Accordingly, on September 28, 1990, Orada gave Ersan Resources a bill of sale for the ERSAN. Thereafter, Ersan Resources applied to the St. Louis Coast Guard for a Certificate of Documentation for the ERSAN relying on the ERSAN's British registry and the bill of sale. Again Margaret Keeling represented to the Coast guard that she was Ersan Resources' director, president and chairman of the board, a U.S. citizen, and owned at least 75% of Ersan Resources' stock and that the hailing port was properly painted on the hull. Consequently, the Coast Guard in St. Louis issued a Certificate of Documentation for the ERSAN with a

new official number, 973155, and new measurements.[6]

Zita's ownership of the ERSAN and Ersan Resources' ownership of the ERSAN V and later the ERSAN was satisfactory at the time to all parties involved. Dundar abided by and benefited from this arrangement for two years. Because of the U.S. documentation of the vessels, he avoided exorbitant Turkish taxes and was able to travel securely in and out of ports in the Mediterranean. In order to use the yachts he obtained powers of attorney from both Zita (for the ERSAN) and

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[6]Neither Margaret nor the St. Louis Coast Guard knew of the prior Norfolk registration.

Margaret (for the ERSAN V and the ERSAN). Moreover, Ersan Resources was a lawful corporation; it complied with all formalities of law in maintaining its corporate existence.[7] It had annual meetings and paid its franchise fees and taxes. Dundar, however, paid for all the maintenance and other expenses and the insurance for the yachts until this ownership dispute developed.

It was not until November of 1991 that affairs began to sour. Two events occurred which apparently precipitated

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[7]Dundar however refused to disclose the value of the yachts to the corporation. Accordingly, they could not be placed in the corporate records.

the present litigation. Dundar was hospitalized for his diabetes. Thus, he gave his then-wife, Necla Ozey ("Necla"), a General Power of Attorney so that she could run his business affairs. However, their marriage was having problems, and thereafter Necla transferred Dundar's 20% interest in Ersan Resources to Erhan.[8]

Erhan too was having marital difficulties. On January 14, 1992, he and Margaret divorced. Their property was divided along family lines and pursuant to a prenuptial agreement;

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[8]The Court finds it unnecessary to determine whether the transfer arose out of the marital difficulties or some other reason.

each basically received what he/she brought into the marriage. Since Ersan Resources was formed during their marriage and thus was not included in the prenuptial agreement, they agreed that the stock in the corporation would go to Erhan. Accordingly, this agreement was made a part of the divorce decree issued by the Oklahoma court. Although Margaret assigned her 80% interest to Erhan, she did not note his name on the stock certificate in what she termed an "open" assignment. Margaret then gave notice of her resignation as president from Ersan Resources in what she termed an "open letter of resignation." She was aware

at the time she endorsed the stock certificate in blank and wrote the letter of resignation that there were reasons why the stock would not be transferred immediately and the letter of resignation would not be accepted immediately. She further knew that the date of Erhan's naturalization as an American citizen was the determinative factor in when the transfer and acceptance of the stock and letter of resignation respectively would take place.

On February 14, 1992, Erhan was elected president and became a U.S. citizen. On that same date Ersan Resources issued the stock certificate

in Erhan's name. It was only after the family upheaval, a consequence of which Erhan obtained 100% of the stock in Ersan Resources, did Dundar challenge the corporate ownership of the yacht.

During Dundar's hospitalization, Ersan Resources hired a captain, Ali Hayta, to maintain the ERSAN. On March 9, 1992, it paid all the accrued marina and maintenance fees and insurance for the yacht and has continued to do so to date. Nonetheless, once Dundar recovered, he brought suit against his wife to invalidate her power of attorney.

Necla however voluntarily rescinded it.[9] Dundar also had Hayta removed from the ERSAN. Consequently, Erhan attempted to take possession of the ERSAN using the St. Louis documentation to show that Ersan Resources owned it. Since the marina manager knew Dundar, he declined to accept Erhan's representation of ownership. Erhan then instituted proceedings in the Turkish courts to establish title to the yacht in the name of Ersan Resources.

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[9]There is no evidence that Dundar has brought any proceedings in turkey or Oklahoma challenging the transfer of the 20% stock in Ersan Resources to Erhan pursuant to Necla's power of attorney.

Dundar intervened in the Turkish suit first claiming that he was the owner of the yacht pursuant to a British registry. When this argument failed, he directed Zita Kiratli, in May of 1992, to redocument the ERSAN with the Norfolk Coast Guard. On May 12, 1992, Zita had the ERSAN's Certificate of Documentation reinstated by notifying the Coast Guard in Norfolk that the 1989 sale to Orada had fallen through. Again she certified that she was a U.S. citizen who owned 100% of the yacht. No mention was made of the ERSAN's documentation in Missouri. Dundar returned to the Turkish court with this certification claiming that

Zita was the owner of the ERSAN, he had a power of attorney from her, and he thus should be given possession of the yacht.

Upon the request of the harbor master in Kusadasi, Turkey, the Norfolk Coast Guard informed him that the ERSAN was documented both in Norfolk, Virginia with an official number 694248, and in St. Louis, Missouri, with an official number 973155. It further noted that the ownership of the ERSAN was disputed thus requiring a U.S. court decision of ownership. Based on this information, the Turkish court declined to determine ownership until the controversy in the United

States was resolved. The Turkish proceedings were continued until January 22, 1993, presumably to give this Court an opportunity to determine ownership of the vessel which is under U.S. registry.

On June 18, 1992, Ersan Resources filed a Complaint against Zita in this Court alleging therein that it is the lawful owner of the motor yacht ERSAN. It traces its chain of title back to the trade of the ERSAN V with Orada for the ERSAN. On July 8, 1992, Ersan Resources asked this Court for an injunction to prevent Zita or anyone acting on her behalf from taking possession or other action against the

ERSAN until this Court ruled on the ownership of the yacht. This temporary injunction was granted on July 16. On July 14, 1992, Zita filed an Answer stating she is the lawful owner of the ERSAN. She denies Ersan Resources' ownership by claiming that the first sale of the ERSAN by Ersan Ticaret to Orada and the trade from Orada back to Ersan Resources were not lawful. Specifically, she argues that the bill of sale transferring the ERSAN to Orada from "Dundar Ozey by Ersan Ticaret, Ltd" did not transfer title to Orada since she did not authorize Ersan

Ticaret to convey the yacht to anyone.[10]

On August 26, 1992, Ersan Resources made a motion to add Dundar as a defendant in the case based on a letter defense counsel wrote to plaintiff's counsel stating that "Zita King Kiratli was merely the 'titular owner' of the yacht ERSAN, as a matter of convenience to Dundar Ozey." Motion to Add Dundar Ozey As a Defendant at 1. This motion was granted on August 31, and Ersan Resources accordingly filed an Amended Complaint adding Dundar and

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[10]The power of attorney from Zita to Dundar did give Dundar the right to transfer or convey the ERSAN, and the bill of sale was in fact signed by "Dundar Ozey."

alleging the defendants (Zita and Dundar) "attempted through fraud and collusion to deprive the plaintiff of its valuable yacht the "Ersan" by attempting to obtain possession and title of said vessel in Kusadasi, Turkey." Amended Complaint at 1. Ersan Resources asks this court to 1) declare it the lawful owner of the ERSAN; 2) grant judgment against the defendants for their fraudulent attempts to deprive the plaintiff of its vessel; 3) award compensatory damages of at least $50,000, punitive damages in the amount of $250,000, attorney fees, costs and prejudgment interest against the defendants for

their fraudulent attempts to deprive the plaintiff of its title to and possession of the ERSAN; and 4) grant a permanent injunction against the defendants prohibiting them from interfering with the plaintiff's title and possession of the ERSAN.

In their Answer, dated September 16, 1992, to the Amended Complaint, Zita and Dundar assume many contradictory positions, as they did throughout the trial. They deny that Dundar was acting under his power of attorney from Zita when he purportedly sold the ERSAN to Orada; however, they also admit that Dundar sold the ERSAN to Orada and later traded the ERSAN V

for it. Defendants further assert that ERSAN's title was transferred to Ersan Resources at that time merely for U.S. documentation purposes. Since Dundar paid the purchase price of both the ERSAN V and the ERSAN from funds in his personal account, he claims he is the equitable owner of the ERSAN, Zita is merely the "titular owner" of the yacht and thus he should be awarded possession.

On September 22, 19892, Dundar filed a Third-Party Complaint against Erhan realleging that he, Dundar, is the equitable owner of the ERSAN and that neither Zita nor Ersan Resources have any financial interest in the

vessel. Dundar admits that Ersan Resources was formed to hold title to the ERSAN V and the ERSAN in order to obtain U.S. documentation and asserts that Erhan's representations to this Court that Ersan Resources is the owner of the ERSAN are based on "misrepresentation[s] of facts, fraud and deceit." Dundar asks this Court to enjoin Erhan from taking any further actions to gain possession and control of the ERSAN in Turkey, grant Dundar ownership of the vessel plus $100,000 in damages resulting from Erhan's fraudulent attempts to gain possession of the vessel and award him $100,000 in punitive damages for Erhan's alleged

misrepresentations of facts, fraud and deceit and conversion of the ERSAN.

On October 6, 1992, this Court granted this injunction and enjoined all parties from seeking a determination of ownership in the Turkish courts. Pursuant to an agreement by the parties, the Court further declared that Ersan Resources and/or Erhan would be responsible for the maintenance of the ERSAN until the final determination of ownership was made at the trial to commence on January 6, 1993.

On October 13, 1992, third-party defendant Erhan answered Dundar's Third-Party Complaint asserting that

Ersan Resources was lawfully formed to hold title to the ERSAN V and the ERSAN and that Dundar agreed and benefited from this arrangement until the family problems began in late 1991. Accordingly, Dundar should be estopped from denying Ersan Resources' ownership. On November 27, 1992, defendants requested a continuance of the trial scheduled for January 6, 1993 until the following week since Dundar was not a party at the time the pretrial conference was held. Defendants further alleged that January 6th was not convenient for Dundar. On December 4, 992, the Court denied defendants' Motion for a Continuance.

CORPORATE OWNERSHIP OF THE VESSEL

The evidence is clear and the parties do not dispute that Dundar used Zita Kiratli and Ersan Resources to hold legal title to the ERSAN and the ERSAN V in order to obtain U.S. documentation and avoid paying considerable Turkish taxes.[11] The issues which are thus before the Court are whether Dundar is estopped from denying the corporate ownership of the vessels or whether Dundar obtained equitable ownership of them through

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[11]Both Dundar and Zita testified to this at trial and admit this in their pleadings. There is also evidence and the Court finds as fact that the U.S. registry facilitated travel in and out of ports in the area where Dundar used the two vessels.

Ersan Resources' corporate organization.

U.S. registration with the Coast Guard is voluntary for vessels that do not operate in the waters of the United States. 46 C.F.R. § 67.01-7 (1991). To be documented, a vessel must be of at least five tons and wholly owned by U.S. citizens. 46 U.S.C. § 12102 (1992); 46 C.F.R. §§ 67.01-7, 67.01-9 (1991). An individual citizen may register the vessel. A corporation may do so as well if:

(1) It is incorporated under the laws of the United States or of a State;
(2) Its president and, if the president is not the chief executive officer, its chief executive officer, by whatever title, is a citizen;

(3) Its chairman of the board of directors is a citizen; and
(4) No more of its directors are noncitizen than a minority of the number necessary to constitute a quorum.

46 C.F.R. § 67.03-9 (1991). Additionally, at least 75% of the corporation's stock issued must be owned by U.S. citizens. There is a $500/day civil penalty for the violation of the documentation requirements, 46 U.S.C. § 12122(a) (1992), and a criminal penalty of up to $10,000 in fines and/or up to five years imprisonment for knowingly and willingly making false statements of material fact to an agency of the

United States. 18 U.S.C. § 1001 (1976).

The application for documentation unambiguously sets forth the U.S. citizenship requirement. For example, an individual must certify that "all owners of [the] vessel are citizens of the U.S.," and a corporate applicant must state its state of incorporation, citizenship of its Chief Executive Officer and Chairman of the Board, the number of directors necessary to constitute a quorum and the percentage of stock owned by U.S. citizens. Certificate of Documentation at Ex. 2 & 3. Moreover, the applicant must attest to the truthfulness of the facts given

in the application, that he/she is a U.S. citizen and that he/she is "equally authorized to execute [the] application in the capacity [in which it is signed]." Id.

In this case Dundar influenced, induced and directed others to execute documents and file them with an agency of the U.S. government stating that the ERSAN was first owned by Zita and then by Ersan Resources and that the ERSAN V was owned by Ersan Resources. Defendants are correct in that although not conclusive, a certificate of documentation is prima facie evidence of ownership. 46 U.S.C. §12104 (1992). The underlying sale of the vessel is

also indicative of ownership. In re Banner Yachts, Inc., 144 B.R. 985 (Bkrtcy. N.D. Ohio 1992); Chase Manhattan Fin. Servs., Inc. v. McMillian, 896 F.2d 452 (10th Cir. 1990); St. Paul Fire & Marine Ins. Co. v. Vest Transp. Co., Inc., 666 F.2d 932 (5th Cir. 1982); Meacham Corp. v. United States, 207 F.2d 535 (4th Cir. 1953), cert. dismd, 348 U.S. 801 (1954); ITT Indus. Credit Co. v. M/V Richard C., 617 F. Supp. 761 (E.D. La. 1985).

In this case, the certificate of documentation along with the evidence that the bill of sale for the ERSAN was

made to Ersan Resources,[12]Dundar used the corporate form for his benefit, and the clear language of the statute and application forms necessitate holding Dundar to his placement of ownership of the yachts in the corporation. He used this format to his advantage and cannot now come to this Court denying the corporate ownership. To hold otherwise would make a mockery of the law. Any alien could own a U.S. documented vessel by use of a strawperson who would hold a meaningless title. Surely

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[12]The Builder's Certification for the ERSAN indicates the vessel was built for Carolina Hatteras, Inc., and the Bill of Sale indicates that Carolina Hatteras, Inc. transferred the vessel to Ersan Resources, Inc.

this could not have been Congress' intent.

Dundar next argues that despite the corporate ownership of the ERSAN, he is its "equitable owner" as he paid for the yacht from his personal accounts and paid for all its upkeep and expenses as well. This argument must also fail for three reasons. First, neither the statute nor the applicable federal regulations mention a distinction between legal or equitable ownership. During the notice and comment period of the statute it was noted that the plain meaning of the statute should guide its implementation. See 54 Fed. Reg.

41,992 (1989)(to be codified at 46 C.F.R. § 67). Only the word "owner" is used in the statute, see e.g. 46 U.S.C. §§ 12102, 12103, 12122 (1992); more importantly, "wholly owned" is used in the regulations. See e.g., 46 C.F.R. §§ 67.01-9, 67.03-1 (1991).

Second, basic corporation law provides that a contribution to capital becomes the property of the corporation and not of the contributing stockholder. See United States v. Wallach, 935 F.2d 445 (2nd Cir. 1991)(shareholders do not hold title to the corporation's property); In re Cash Currency Exchange, Inc., 52 B.R. 577 (Bkrtcy. N.D. Ill. 1985)("ownership of

corporate property vests in the corporation"). Only when the contributing stockholder specifies in writing that the property contributed is merely a loan and thus not the corporation's property is the stockholder entitled to the equity in the contributed property. In re Argo Communications Corp., 134 B.R. 776 (Bkrtcy. S.D.N.Y. 1991)(a repayment schedule or demand is required for stockholder to retain interest in the contributed capital); In re B & L Laboratories, Inc., 62 B.R. 494 (Bkrtcy. M.D. Tenn. 1986)(loan to corporation is actually a contribution to capital where there is no evidence

that the shareholder has "unconditional right to demand repayment evidenced by a formal written instrument").

There is no evidence of such an arrangement here. In fact, when Dundar transferred the ERSAN V to Ersan Resources, he conveyed "all right, title and interest in and to a motor yacht at a book value to be later determined." Ex. 4 (emphasis added). There is no indication of Dundar retaining any equitable ownership, and the use of "all" indicates it was not implicitly agreed to either. When the ERSAN V was replaced by the ERSAN in corporate ownership, it is only logical

that Ersan Resources received all rights to the ERSAN as well.

Third, in asserting equitable ownership to the ERSAN, Dundar comes to this Court with unclean hands. If he intended to retain ownership of the ERSAN, this implies he had his agents, Zita and Margaret, falsely file documents on his behalf in violation of the laws of the United States. He may not now be heard to profit by his criminal conduct by saying to the contrary. Terry v. Yancey, 344 F.2d 789 (4th Cir. 1965) ("where an individual creates a corporation as a means of carrying out his business purposes he may not ignore the

existence of the corporation in order to avoid its disadvantages"); cf. Consolidated Aluminum Corp. v. Foseco Int'l Ltd., 910 F.2d 804 (Fed Cir. 1990)(Withholding information from a patent and trademark office during the prosecution of an application may so soil the patent applicant's hands as to render all patents in the suit unenforceable); Callanan Road Improvement Co. v. United States, 345 U.S. 507 (1953)(an appellant cannot take a contrary position to that invoked to obtain benefits earlier); Admiral towing Co. v. Woolen, 290 F.2d 641 (9th Cir. 1961)(same); MedX, Inc. v. Ranger, 788 F. Supp. 288 (E.D. La.

1992)(Equity will not protect one who enters into a contract with the intention of breaking it).

Dundar lastly claims Erhan defrauded Margaret out of her 80% stock in Ersan Resources. He asserts that Erhan must be bound by an alleged statement Erhan made to Margaret informing her that the corporation had no assets because Dundar really owned the ERSAN, the company's only asset. Margaret and her divorce lawyer testified to such statement being made during a property settlement conference; Erhan and his divorce lawyer assert that no such statement was made.

The Court finds the testimony of Erhan and his lawyer to be more credible. Margaret's lawyer, who had trouble remembering her own office address, could not remember whether the alleged statement was made during a break in negotiations or at the end of negotiations. The evidence established that Margaret had five years experience as a manager of a chiropractic practice and was actively involved with her wealthy father and sister in several business enterprises. Further her father was present at the conference at which the alleged "no value" statement was made. Certainly Margaret and her father were experienced enough business

people to make their own judgment about the ownership of the ERSAN. Moreover, Margaret agreed to making the property settlement agreement which transferred her stock in Ersan Resources to Erhan as part of the divorce decree, and there is no evidence that she has tried to have that decree set aside for fraud or any other reason.

Even if Erhan made the statement, it would have been made in the context of a negotiation conference where each side was "posturing"; such a statement could not be considered as a serious and legally binding commitment. In any event, Margaret, as president - and chairman of the board of Ersan

Resources, cannot claim she was in the dark when it came to matters concerning corporate assets. For the foregoing reasons the Court **FINDS** that Erhan Ozey did not make any legally or factually significant statement to Margaret Ozey acknowledging Dundar Ozey's ownership of the ERSAN.

CONCLUSION

The Court **FINDS** that Ersan Resources, Inc. is the lawful owner of the ERSAN and that Erhan Ozey is its sole stockholder and President. Defendants Zita King Kiratli and Dundar Ozey are permanently enjoined from interfering with Ersan Resources' right to ownership and possession of the

ERSAN. Accordingly, the U.S. Coast Guard in Norfolk, Virginia is **ORDERED** to cancel the documentation of the ERSAN. The Court approves and ratifies the St. Louis, Missouri Coast Guard's documentation of the ERSAN in the name of Ersan Resources, Inc. The Court declines to award Erhan Ozey $7,216.55 in compensatory damages ($2,800 for air fare costs to Erhan Ozey and $4,416.55 for legal fees incurred in turkey) as these costs were incurred in furtherance of the determination of ownership of the ERSAN, and no authority has been cited to cause this Court to depart from the American rule that each part pays his own preparation

and trial costs except the taxable court costs imposed by the clerk.

The clerk is **DIRECTED** to send a copy of this Order to all counsel of record and to the U.S. Coast Guard in Norfolk, Virginia and in St. Louis, Missouri. The Coast Guard copies shall be certified.

IT IS SO ORDERED.

United States District

Norfolk, Virginia
January 15, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

ERSAN RESOURCES, INC.,
an Oklahoma corporation,

Plaintiff,

v.

CIVIL ACTION
NO. 2:92cv464

ZITA KING KIRATLI,
Defendant,

ORDER

This matter came on this day on plaintiff's Motion to hold the defendant in contempt of court for violating this Court's Injunction entered on July 16, 1992, and after considering testimony, the exhibits and the arguments of counsel;

The Court hereby finds that the defendant Zita King Kiratli violated

the Court's Injunction of July 16, 1992 by her failure to prevent her attorneys in Kusadasi, Turkey from proceeding in hearings at courts in that city held on July 31, 1992 and on August 5, 1992, wherein the title to the vessel "Ersan" was contested;

The Court further finds that the defendant Zita King Kiratli violated the Injunction issued by the Court on July 16, 1992 by filing, through her attorneys, a petition in the Civil Court of Kusadasi, Turkey on August 5, 1992 further contesting the ownership of the yacht "Ersan";

The Court finds that the defendant's violations of the

Injunction constitute a contempt of this Court which the Court further finds has resulted in damages being sustained by the plaintiff in the sum of $4,649.00 representing air fare of Mr. Erhan Ozey, President of Ersan Resources, Inc. in flying to Turkey for the hearings, in the sum of $2,100.00, a hotel bill of $49.00 and attorney's fees of $2,500.00, for total damages amounting to $4,649.00. As a result of defendant's contempt of Court and the damages she has caused the plaintiff, the Court hereby

ADJUDGES, ORDERS and DECREES that the defendant Zita King Kiratli pay the

sum of $4,649.00 to the plaintiff Ersan Resources, Inc.

The defendant, through her counsel, notes her objections and exceptions to the ruling of the Court.

Norfolk, Virginia
August 10, 1992

_____
United States
District Judge

WE ASK FOR THIS:

_____
Of Counsel for Plaintiff,
Ersan Resources, Inc.

SEEN AND OBJECTIONS NOTED:

_____
Of Counsel for Defendant,
Zita King Kiratli

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

ERSAN RESOURCES, INC.,
an Oklahoma corporation,

Plaintiff,

v. **CIVIL ACTION**
NO. 2:92cv464

ZITA KING KIRATLI
313 Wendover Road
Baltimore, Maryland 21218

Defendant.

INJUNCTION

This matter came on for hearing on this date and after considering the testimony, the affidavits and exhibits filed with the Court, the Court finds that the vessel Ersan, hull number HATBX312K586, which is the vessel documented with the United States Coast

Guard in St. Louis, Missouri, is legally owned by Ersan Resources, Inc.

Having made the finding that Ersan Resources, Inc. is the legal owner of the vessel Ersan, the Court hereby enjoins Zita King Kiratli and anyone acting on her behalf or as her power of attorney from in any way interfering with the rights of Ersan Resources, Inc., to free and unimpeded access to the vessel.

And the Court further enjoins Zita King Kiratli or anyone acting on her behalf or as her power of attorney from making any representations to any government authority anywhere in the world that Ersan Resources, Inc., does

not own the vessel or in any way interfering with Ersan Resources, Inc.'s, claim to ownership and complete dominion over it.

It appearing that Ersan Resources, Inc. has posted a bond with corporate surety in the amount of $5,000.00 for the payment of any damages that defendant may suffer as a result of this Injunction, it is ORDERED that a copy of this Injunction be promptly served on the defendant Zita King Kiratli and on her attorney.

Norfolk, Virginia
July 16, 1992

_____
United States District Judge

WE ASK FOR THIS:

Of Counsel for Plaintiff

IN THED UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

ERSAN RESOURCES, INC.,

Plaintiff,

v.

CIVIL ACTION
NO. 2:92cv464

ZITA KING KIRATLI,

Defendant,

and

DUNDAR OZEY,

Defendant and Third-Party Plaintiff,

v.

ERHAN OZEY,

Third-Party Defendant.

O R D E R

This matter is before the Court on the Motion of Defendants, Zita King

Kiratli ("Zita") and Dundar Ozey ("Dundar"), for Reconsideration of this Court's Order of January 15, 1993, finding Ersan Resources, Inc. ("Ersan Resources") to be the owner of the yacht ERSAN and permanently enjoining Zita and Dundar from interfering with Ersan Resources' ownership and use of the ERSAN. For the reasons stated below, the motion is **DENIED**.

Defendants have asked this court to reconsider its decision to permanently enjoin them from interfering with Ersan Resources' use and possession of the ERSAN because "[t]he practical effect of the injunction [prevents them] from litigating title to the ERSAN in the Turkish courts." Brief in Support of

Motion for Reconsideration at 1. Defendants support their motion with the following arguments. First, they claim that since this Court asserted admiralty jurisdiction over the suit, it had no power to issue the permanent injunction. Second, they assert the practical effect of the injunction violates notions of comity by interfering with Turkey's jurisdiction. Finally, Dundar contends that this Court has no authority to issue an injunction against him because he is a resident and citizen of Turkey.

Plaintiff responds to these contentions by first noting that there is modern trend in federal courts sitting in admiralty to issue injunctions. Second, it notes that it

invoked the Court's power to issue injunctions in its original complaint by asserting jurisdiction pursuant not only to 28 U.S.C. § 1333 but to 28 U.S.C. §§ 1331, 1332, and 2202 as well. Finally, plaintiff argues that since Dundar was added as a party to this suit and even filed a third-party complaint asking for injunctive relief, this Court has the power to issue an injunction against him. The Court agrees.

Historically, admiralty courts have not been vested with general equitable powers to issue injunctions. See e.g. Schoenamsgruber v. Hamburg American Line, 294 U.S. 454, reh'g denied, 294 U.S. 734 (1935). However, there is a modern trend in the circuits

eroding this proscription. See Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 640 F.2d 560 (5th Cir. 1981); Pino v. Protection Maritime Ins. Co., 599 F.2d 10 (1st Cir.), cert. denied, 444 U.S. 900 (1979); Lewis v. S.S. Baune, 534 F.2d 1115 (5th Cir. 1976); Compania Anonima Venezolana De Navegacion v. A.J. Perez Export Co., 303 F.2d 692 (5th Cir.), cert. denied, 371 U.S. 942 (1962); Indian River Recovery Co. v. The China, 645 F. Supp. 141 (D. Del. 1986); Complaint of Valley towing Serv., 629 F. Supp. 139 (E.D. Mo. 1985); McKie Lighter Co. v. City of Boston, 335 F. Supp. 663 (D. Mass. 1971).

The cases cited by defendants in support of their argument that this Court does not have the power to enjoin Zita and Dundar are not to the contrary. They simply indicate that those courts have not yet had the need to address the issue of whether or not they would follow the modern trend. See e.g. China Trade and Dev. Corp. v. M.V. Choong Yong, 837 F.2d 33, 35 (2nd Cir. 1987)(Court found that equitable relief requested should not have been granted by any court); Eddie S.S. Co. v. P.T. Karana Line, 739 F.2d 37, 38-39 (2nd Cir. 1984)(same); cert. denied, 469 U.S. 1073 (1984).

Moreover, the Fourth Circuit has impliedly upheld the use of an injunction by a federal court sitting

in admiralty. In Columbus-America Discovery Group v. Atlantic Mutual Ins. Co., 974 F.2d 450 (4th Cir. 1992), an admiralty case which concerned competing salvage rights to a 1857 shipwreck, the district court twice enjoined all salvors from interfering with the plaintiff's right to salvage. Id. at 458. Although the Fourth Circuit ultimately determined that the plaintiff did not have the exclusive right to salvage the wreck, it never questioned the propriety of the district court's power to use an injunction. See id. at 458, 467-68; accord Nissan Motor Corp. in U.S.A. v. Maryland Shipbldg. & Drydock Co., 544 F. Supp. 1104 (D. Md. 1982), aff'd

without opinion, 742 F.2d 1449 (4th Cir. 1984).

Furthermore, this Court has jurisdiction over Dundar to issue a permanent injunction against him because he was properly served in this matter, asked for injunctive relief against Ersan Resources in his Third-Party Complaint, and made a general appearance and testified at trial. Defendants' argument that the Court should not enjoin them from relitigating the question of ownership in turkey because the ERSAN is presently located in a Turkish marina must also fail. Dundar intentionally registered the ERSAN in the United States and is therefore subject to U.S. courts' enforcement of all laws

concerning and affecting the vessel. Moreover, the injunction issued by this Court does not offend notions of comity because it is directed towards Zita and Dundar, not the Turkish courts, and the Turkish courts specifically stayed the proceedings in their forum until this Court could make a determination as to the ownership of the ERSAN.

CONCLUSION

The Court **FINDS** that it has the power to issue a permanent injunction enjoining Zita and Dundar from interfering with Ersan Resources' use and possession of the ERSAN. Accordingly, Defendants' Motion to Reconsider is **DENIED**.

The Clerk is directed to send a copy of this Order to Plaintiff and counsel for Defendant.

IT IS SO ORDERED.

_____

United States District Judge

Norfolk, Virginia
February 4, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

ERSAN RESOURCES, INC.,
an Oklahoma corporation,

Plaintiff,

v. **CIVIL ACTION NO. 2:92cv464**

ZITA KING KIRATLI
313 Wendover Road
Baltimore, Maryland 21218

Defendant.

COMPLAINT

Ersan Resources, Inc. (hereinafter "Ersan Resources"), complains of the defendant, Zita King Kiratli (hereinafter "Zita") in the following particulars.

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is claimed under the Constitution of the United

States and 28 USC §1333 regarding admiralty and maritime claims.

2. Alternatively, jurisdiction is claimed under 28 USC §1331, a federal question having been raised as to the proper documentation of a vessel by United States Coast Guard Documentation Officers at Norfolk, Virginia and at St. Louis, Missouri.

3. The plaintiff is a corporation duly organized and existing under the laws of the State of Oklahoma and the defendant is, on information and belief, a resident and citizen of the State of Maryland. Therefore, jurisdiction is alternatively claimed under 28 USC §1332 since there is diversity of citizenship and the matter in controversy exceeds the sum of Fifty

Thousand Dollars ($50,000.00), exclusive of interest and costs.

First Cause of Action

4. The plaintiff asks the Court pursuant to its general maritime jurisdiction and also pursuant to the Declaratory Judgment Act, 28 USC §2201, et seq. to declare that it is the lawful owner of the motor yacht Ersan, a valuable vessel.

5. The yacht Ersan was built by Hatteras Yachts, Inc. in New Bern, North Carolina in 1985, has a hull number of 65LR312 and a hull identification number of HATBX312K586. It is approximately 65 feet in overall length (60.7 feet between perpendiculars). The vessel was built for Ersan Ticaret Limited, a Turkish

Corporation, which immediately sold the vessel to the defendant Zita King Kiratli, the bill of sale being signed by one Dundar Ozey, the President of Ersan Ticaret Limited (See Exhibit A attached herewith). The defendant Zita then documented the vessel with the United States Coast Guard at Norfolk, Virginia where it was assigned official number 694248.

6. Shortly after the vessel was registered at Norfolk the defendant Zita gave a power of attorney to Dundar Ozey of Ankara, Turkey, giving him full power to act for her in regards to the vessel Ersan, including authority to sell the yacht. This power of attorney was dated May 15, 1986 (see Exhibit B attached herewith).

7. Acting under his power of attorney, the said Dundar Ozey sold the Ersan to Orada Limited of St. Peter, Jersey, Channel Islands, United Kingdom, by bill of sale dated January 27, 1989 (see Exhibit C attached herewith), after which the vessel was issued a certificate of British Registry (see Exhibit D, dated May 5, 1989 attached herewith).

8. Upon inquiry ~~from the~~ Coast Guard to the defendant as to why the vessel's documentation had not been renewed (as required annually), the defendant Zita on May 25, 1989 advised the Coast Guard at Norfolk as follows:

> Kindly cancel the documentation for this boat. The boat has been sold. I have searched and searched for the certificate of

> documentation but cannot locate it. I will forward it if I find it, but I fear it has been lost.

This was signed "Zita Kiratli, former owner" (See Exhibit E, two pages, attached herewith). Acting on this advise from the vessel's former owner, the Coast Guard canceled the documentation.

9. On August 14, 1990 Orada Limited sold the Ersan to plaintiff Ersan Resources, Inc., with the bill of sale on the U.S. Coast Guard form being signed on September 28, 1990 (see Exhibit F attached herewith). The vessel was then documented by plaintiff under the U.S. Registry with the Coast Guard at St. Louis, Missouri (see Exhibit G, Application for

Documentation attached herewith) and the vessel was given official number 973155. The plaintiff Ersan Resources, Inc. has remained the owner of the vessel up to the present time.

10. Despite the full knowledge of the defendant Zita and her attorney-in-fact, Dundar Ozey, that the plaintiff was the owner of the yacht Ersan, in the spring of 1992, the aforesaid Dundar sought to assert control and gain possession of the Ersan at Kusadasi, Turkey. Dundar and others seized the vessel and removed the official numbers and markings from the vessel, all contrary to law. When the plaintiff sought to regain possession of the vessel, the defendant, Zita falsely told the Coast Guard at Norfolk

that the sale which had occurred three years previously, did not go through and that she was still the legitimate owner of the vessel (see Exhibit H, Application for Documentation signed by defendant Zita dated May 4, 1992 attached herewith and the letter dated May 22, 1992 by the defendant Zita denying that there had been any change of ownership or sale of the vessel in 1989, (see Exhibit I attached herewith). These representations were made to the Coast Guard without the knowledge of the plaintiff and, acting thereon, the Coast Guard redocumented the vessel at Norfolk in the name of the defendant Zita.

11. The plaintiff asked a Turkish court to hold the vessel and seal it

pending resolution of the question of title to the vessel which can only be decided by a United States court.

The Turkish court has now sealed the vessel, pending a decision as to ownership. The Vessel Documentation Officer at Norfolk, Virginia for the U.S. Coast Guard sent a message to the Harbor Master at Kusadasi, Turkey advising that the identical vessel was registered in St. Louis and in Norfolk with different official numbers and that a U.S. Court decision was required to determine ownership of the boat (see Exhibit J attached herewith and dated June 3, 1992).

12. Since the plaintiff is the legitimate owner of the yacht Ersan and the defendant has fraudulently induced

the United States Coast Guard at Norfolk to redocument the vessel in her name, the plaintiff requests the Court to declare that it is the owner of said vessel to the exclusion of any claims of title by the defendant.

Second Cause of Action

13. The plaintiff incorporates herein the allegations of paragraphs one through twelve of the Complaint in and for its second cause of action.

14. The defendant Zita King Kiratli, acting on her own behalf as alleged owner of the vessel, and in conjunction with her attorney-in-fact, Dundar Özey and possibly others in Turkey, has fraudulently attempted to deprive the plaintiff of its ownership of a valuable yacht worth in the

vicinity of One Million Dollars ($1,000,000.00). The defendant by giving false information to the United States Coast Guard at Norfolk, Virginia has induced the Coast Guard to issue a second registration for the Ersan so as to aid plaintiff and others before the Turkish courts in a fraudulent attempt to take the plaintiff's property.

15. As a result of defendant's fraud and intentional acts against the plaintiff, the plaintiff has been deprived of use of its vessel while the Turkish court retains the vessel in its possession, it has sustained damages directly to the vessel, it has incurred costs of attorneys in Turkey and in the United States as well as substantial travel and other expenses, all to the

plaintiff's detriment. Plaintiff has sustained damages and will sustain damages in the future exceeding the sum of Fifty Thousand Dollars ($50,000.00) exclusive of interest and costs as a direct result of defendants fraud and plaintiff prays for judgment against defendant for compensatory damages.

Third Cause of Action

16. The plaintiff incorporates herein the allegations of paragraphs one through fifteen of its Complaint in and for its third cause of action.

17. Because of the defendant's fraud and intentional wrong doing in attempting to deprive the plaintiff of its ownership in the vessel Ersan and in depriving the plaintiff of its possession of the aforesaid vessel, the

plaintiff is entitled to punitive and exemplary damages against the defendant. Plaintiff asks the Court for punitive damages in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) by reason of the defendant's willful, malicious, fraudulent and intentional misconduct directed to the plaintiff.

Fourth Cause of Action

18. The plaintiff herein incorporates the allegations of paragraphs one through seventeen of its Complaint in and for its fourth cause of action.

19. As a result of the defendant's continuing actions directed against the plaintiff and her refusal to advise the Coast Guard that she is

not the owner of the yacht Ersan, which actions deprive the plaintiff of the use of its vessel, the plaintiff asks the Court for an appropriate injunction directed against the defendant, prohibiting her from asserting any ownership or possessory interest in the yacht Ersan and further directing the defendant to cancel any power of attorney she has given to Dundar Ozey or anyone else in regards to the yacht Ersan. The plaintiff further asks the Court to enjoin the defendant from taking or continuing any action in Turkey to gain title, control or possession of the aforesaid vessel.

WHEREFORE, the plaintiff asks the Court to grant it judgment against the defendant on all four causes of action

including a declaration that plaintiff is the lawful owner of the yacht Ersan and further to award it compensatory damages in a sum exceeding Fifty Thousand Dollars ($50,000.00), punitive damages in a sum up to Two Hundred Fifty Thousand Dollars ($250,000.00), to enjoin the defendant from asserting any title or possessory interest in the yacht Ersan as specified in the fourth cause of action and to award plaintiff its attorney's fees, costs and prejudgment interest.

ERSAN RESOURCES, INC.

BY_____
Of Counsel

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93-664

CASE NO. 93-1144

Supreme Court, U.S.
FILED
OCT 29 1993

IN THE

Supreme Court of the United States

October Term, 1993

ZITA KING KIRATLI and
DUNDAR OZEY,

Petitioners,

v.

ERSAN RESOURCES, INC. and
ERHAN OZEY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Carter B. S. Furr
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Norfolk, Virginia 23510
(804) 622-3240

Counsel of Record for Respondents

BEST AVAILABLE COPY

QUESTIONS PRESENTED FOR REVIEW

I. Was the United States Court of Appeals for the Fourth Circuit correct in dismissing an appeal, after both the district court and the court of appeals found petitioners in continuing contempt of a previously issued injunction which was a subject of the appeal?

II. Was the United States Court of Appeals for the Fourth Circuit correct in dismissing the appeal of Zita King Kiratli after dismissing the appeal of Dundar Ozey because she was only a nominal party and not a real party in interest?

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STATEMENT OF THE CASE

This case arises out of a dispute over the ownership of a yacht named the ERSAN originally owned by petitioner Dundar Ozey ("Dundar"), but later conveyed to a family corporation respondent Ersan Resources, Inc.[1] ("Ersan Resources"), an Oklahoma corporation, now solely owned by respondent Erhan Ozey ("Erhan"), the son of Dundar.

The ERSAN was purchased in the United States by Dundar in 1985 and documented as a U.S. flag vessel with the Coast Guard in Norfolk, Virginia. In order to subvert the documentation laws of the United States, Dundar had the yacht titled in the name of petitioner Zita King Kiratli ("Zita"), the

---

[1] Ersan Resources, Inc. has no parent or subsidiary companies. Rule 29.1.

wife of his cousin living in Baltimore, Maryland. The statutes and regulations clearly prohibit a foreign individual from owning a U.S. documented vessel. 46 USC §§12102, et seq., 46 CFR §67.01-9, 46 CFR §67.03, et seq.

Zita promptly gave Dundar a full power of attorney to use the yacht, including a power to sell same. Zita testified that Dundar was the real owner and she was simply a "paper figure" or "titular owner." (A-3)

In 1989 the ERSAN was sold by Dundar to an English corporation Orada Limited at which time Zita advised the Coast Guard to cancel the vessel's documentation. (A-41)

Also in 1989, Dundar requested his son Erhan to form a U.S. corporation into which Dundar would convey a new

yacht in exchange for shares of stock. Ersan Resources was then formed and became the owner of a yacht contributed by Dundar in exchange for 20% of the shares of stock, the remaining 80% being owned by Erhan's wife Margaret. (A-41 - A-42) In 1990, the first yacht was swapped for the ERSAN which was conveyed to Ersan Resources by Orada Limited, and thereafter documented under U.S. flag with the Coast Guard in St. Louis, Missouri.

In 1992 Erhan acquired all of the stock of Ersan Resources, after which Dundar commenced efforts to obtain possession and ownership of the yacht ERSAN then located in Kusadasi, Turkey. He persuaded Zita in May of 1992 to have the yacht ERSAN redocumented in her name with the Coast Guard in Norfolk, by

falsely telling the Coast Guard that the sale of the vessel three years earlier had not gone through. (A-68)

Because the yacht was now documented in two different Coast Guard districts, St. Louis and Norfolk, under two different registered owners, Ersan Resources instituted the present action on June 19, 1992 requesting a declaratory judgment to determine the correct owner of the vessel and further asking that an injunction be issued against Zita (and later against Dundar after an amended complaint was filed) prohibiting any interference with Ersan Resources' title and possession of the vessel. The complaint alleged admiralty jurisdiction, 28 USC §1333, federal question jurisdiction, 28 USC §1331 and diversity jurisdiction, 28 USC §1332, further

asking for a determination of ownership under the Declaratory Judgment Act, 28 USC §2201, et seq.

On August 10, 1992 Zita was found in contempt of a preliminary injunction for assisting Dundar in Turkish litigation seeking control of the yacht there. She has paid the damages assessed against her and has made no appeal of this contempt finding or of the damages that she paid. It is noted that both Dundar as well as Ersan Resources obtained preliminary injunctions prohibiting either side from continuing litigation in Turkey until the case could be decided on the merits.

After a four day trial the district court issued its opinion on January 15, 1993 upholding Ersan Resources' right to title and possession of the vessel and

permanently enjoining the petitioners Dundar and Zita from interfering with said rights. It should be noted that no money damages were awarded, only injunctive relief.

Neither petitioner filed any supersedeas bond or filed any motion to stay the injunction pending appeal. Instead the petitioners immediately sought to take action in the Turkish court at Kusadasi in complete violation of the injunction issued against them. Thereafter Dundar appeared in person and by counsel at the Basic Civil Court in Kusadasi on April 21, 1993 asserting that the United States judgment was invalid and asked for the yacht to be turned over to him. Although the Turkish court did not immediately act it did require Ersan Resources to post a

large cash bond of some $89,000.00 plus payment of other expenses pending a decision.[2]

This forced Ersan Resources to request a contempt hearing before the district court in Norfolk. Although Zita purged herself of contempt by withdrawing from the Turkish proceedings, Dundar refused to do so and was found in contempt at a hearing on May 13, 1993 and fined $1,000.00 per day until he purged himself of contempt.[3]

Because the contempt citation of the district court was ignored by Dundar

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[2] That court on August 25, 1993 ruled that Ersan Resources did in fact own the vessel, but petitioner Dundar has appealed that ruling.

[3] He still remains in contempt as of this writing.

who remained in Turkey, Ersan Resources asked the court of appeals to dismiss the appeal of Zita and Dundar unless they discontinued their contumacious conduct.

After the court of appeals gave Dundar ten days to purge himself of contempt, it dismissed his appeal by order of July 8, 1993 when he advised the court that he refused to withdraw from the Turkish proceedings. Thereafter following briefs, the court likewise dismissed Zita's appeal by order of July 20, 1993 since it found that Zita was only a nominal party and that her claim rested entirely on that of Dundar, the real party in interest.

It is noted that while Zita and Dundar appealed the district court's order and injunction of January 15,

1992, they did not appeal the contempt findings of the district court.

ARGUMENT

Summary of Argument

There are no proper grounds for granting a writ of certiorari under Rule 10 of the Supreme Court Rules or otherwise. The decision of the court of appeals does not conflict with any decision of another United States court of appeals, a state court of last resort or of any decision of this Court. There is no important question of federal law to be decided under the facts of this case since the dismissal of an appeal by one in open defiance of a lower court's injunction has not only been sanctioned by this Court, National Union of Marine Cooks & Stewards v. Arnold, 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954), but is

the majority view in this country. 17 Am. Jur. 2d, Contempt §226, p. 578.

Likewise since Dundar seeks to obtain the yacht ERSAN as his sole property and had only utilized Zita to hold a purported paper title to the vessel, the dismissal of Dundar's appeal necessitated the dismissal of Zita's since she is only a nominal party who has no independent claim to this vessel. Her appeal did not involve any money judgment, only the injunction prohibiting her from interfering with Ersan Resources' title and possession of the vessel.

I. Since the Fourth Circuit Court of Appeals' decision in dismissing the appeals follows generally accepted law and is in conflict with no decision of this Court or other circuits there are no proper grounds for granting certiorari.

This case simply involves a dispute

over ownership of a boat and is of little import other than to the parties involved. When petitioners lost their arguments in the district court and were enjoined from interfering with Ersan Resources' rights to the vessel, they never sought to post a supersedeas bond to stay the proceedings pending appeal, Rule 62(d), Federal Rules of Civil Procedure, nor did they file a motion to stay the injunction pending appeal, Rule 62(c), Federal Rules of Civil Procedure, but elected to proceed in the Turkish courts to retry the issue of the vessel's ownership in face of the injunction prohibiting this conduct. The petitioners therefore were not without legal remedies to stay the injunction pending their appeal, but simply chose not to exercise them.

Petitioner Dundar having no property in the United States and remaining in his native country of Turkey, felt that he was outside the power of the United States courts to prevent him from obtaining the vessel in Turkey despite the injunction against him. Thus, his disregard of the mandates of both the district court and the court of appeals did in fact "show a determined effort to deprive the court of power to execute its mandate (i.e.) ... an undisputed, studied, and successful attempt to render the court powerless to enforce its decree." In re Feit v. Drexler, Inc., 760 F.2d 406, 413 (2d Cir. 1985). Petitioner Dundar while asking the United States courts for their assistance in his appeal, at the same time displays his utter contempt for the

orders of these courts by his attempts in Turkey to gain control of the vessel. The dismissal of his appeal by the court of appeals, was necessitated in order to uphold the dignity and authority of our judicial system.

Contrary to the assertions of petitioners, this Court has upheld just such a dismissal of an appeal by an appellant who is in contempt of a lower court's orders. In National Union of Marine Cooks & Stewards v. Arnold, 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954), this Court upheld as reasonable the dismissal by the Washington Supreme Court of the appeal of an appellant in contempt of an order issued by the trial court. It was held that such a dismissal was not a violation of either the due process or the equal protection

clauses of the Constitution.

This Court has also upheld the dismissal of an appeal by a prisoner who had escaped and become a fugitive from justice at the time of his appeal. In Molinaro v. New Jersey, 396 U.S. 365, 366, 90 S.Ct. 498, 24 L.Ed. 2d 586 (1970), the Court reasoned that the prisoner's escape "disentitles the defendant to call upon the resources of the Court for determination of his claims." The same reason has been applied in appellate dismissal of civil claims by prisoners who have escaped, Broadway v. City of Montgomery, 530 F.2d 657 (5th Cir. 1976) and Shaw v. Estelle, 542 F.2d 954 (5th Cir. 1976).

Not only is the dismissal of the appeal by the court of appeals in this case not in conflict with any case of

the Supreme Court or of the other courts of appeals, it is in harmony with the law generally in this country. This view is reflected in 17 Am. Jur. 2d, Contempt §226, p. 578:

> Under the court's inherent power to ignore the demands of litigants who persist in defying the legal orders and processes of the jurisdiction, the court may dismiss an appeal by a person who stands in contempt of court in the proceeding in which he seeks to take an appeal.

That this is the view of the majority of courts, see the annotation on this point in 49 ALR 2d 1429.

Because the petitioners have failed to demonstrate that the decision of the court of appeals is in conflict with any decision of this Court or of any other

court or that it was a departure from the accepted and usual course of judicial proceedings or involves an important question of federal law which should be settled by this Court, Rule 10, Supreme Court Rules, this Court should deny the petition of one who stands in open contempt of the orders of lower federal courts.

II. The dismissal of petitioner Zita's appeal because she was only a nominal party presents no issue warranting a grant of certiorari.

After the court of appeals dismissed petitioner Dundar's appeal by reason of his refusal to purge himself of contempt, it made a factual determination that petitioner Zita was only a nominal party and not the real party in interest and dismissed her appeal as well. This was supported by the record including her testimony that if she has

any interest in the yacht that she was only a "paper figure" on behalf of Dundar. No reasons have been given in petitioners' brief as to why this Court should grant a writ based on an admittedly factual dispute resolved against the petitioner. See Rule 10, Supreme Court Rules.

Zita has no grounds independent of those asserted by Dundar for the writ to be granted. In fact if her appeal were granted and later remanded to the court of appeals, an irreconcilable conflict would be presented to that court in that the dispute over title to the vessel ERSAN would have been resolved in favor of Ersan Resources against petitioner Dundar, the real party in interest. In such case if Zita had any interest as a "titular owner" it would be only for the

benefit of Ersan Resources, not Dundar. There are therefore no compelling reasons for this Court to grant a writ for Zita.

CONCLUSION

A petition for a writ of certiorari will be granted "only when there are special and important reasons therefor." Rule 10, Supreme Court Rules. Petitioners have shown no conflicts with other cases nor any other special or important reasons for granting the writ herein. The decision below of the court of appeals to uphold the dignity and respect of the U.S. judicial system is consistent with cases in this Court and generally in this country.

Therefore it is respectfully requested that this Court deny the petition for writ of certiorari requested by each of the petitioners.

RESPECTFULLY SUBMITTED,
ERSAN RESOURCES, INC. AND
ERHAN OZEY

BY
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